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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 219

W. L. BRIDGES, SR.,
Petitioner,
versus
THE STATE OF TEXAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

HUME COFER
JOHN D. COFER
1408 Capital National Bank Bldg.
Austin 1, Texas

ATTORNEYS FOR PETITIONER

OF COUNSEL:
DOUGLASS D. HEARNE
Of Austin, Texas

Baldwin Printing Company, Inc., 209 West Eighth Street, Austin

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TO THE HONORABLE EARL WARREN, CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, W. L. Bridges, Sr., prays that a writ of certiorari issue to review the judgment of The Court of Criminal Appeals of Texas, entered in Cause Number 34,053 and the above-entitled case on April 4, 1962.

Citations to Opinion and Action Below

The opinion of the Court below is as yet unreported, and it, on original submission, and upon Motion for Rehearing, is printed in Appendix B hereto, infra pp. 17-18. There was no opinion by the District (Trial) Court. The trial was before the Court without a jury. (R. 15-16)

Jurisdiction

The judgment of the Court of Criminal Appeals affirming petitioner's conviction was returned January 3, 1962 (R. 30, printed in Appendix B hereto, infra p. 19). Rehearing was denied with written opinion (R. 85-87; opinion printed in Appendix B hereto, infra p. 59; order overruling printed infra, p. 60).

Under the Rules adopted by The Court of Criminal Appeals, Rule VI, (R. 95, printed in Appendix A. hereto, infra pp. 14-15), the appellant is entitled as a matter of right to file a Second Motion for Rehearing within fifteen (15) days from the overruling of the First Motion for Rehearing.

The First Motion for Rehearing was filed January 17th, 1962, within the time required by law (R. 31); petitioner filed, with leave of Court, his Amended Motion for Rehearing on February 19, 1962 (R. 33). Said Motion as amended was overruled by written opinion February 28, 1962.

Second Motion for Rehearing was filed March 15, 1962 (R. 88); and overruled without written

opinion by judgment entered April 4, 1962 (R. 93-94; printed in Appendix B hereto, infra pp. 62-63).

It is from this last final judgment of April 4, 1962 to which petition for certiorari is taken.

Petitioner promptly (April 6, 1962) filed a Motion for Leave to File Third Motion for Rehearing or in the Alternative for Stay Pending Certiorari to The Supreme Court of the United States (R. 97-105); which was not filed or allowed (R. 112).

Upon sworn application (respondent making no opposition), on April 18, 1962, mandate was stayed by Associate Justice Black (R. 106-107).

The jurisdiction of The Supreme Court is invoked under 28 U.S.C., Section 1257 (3).

How Federal Question Raised

The point that petitioner did not get a fair trial because his counsel was disqualified to advise him to plead guilty and take the blame in the case and accept punishment in lieu of his son, his joint defendant, in order that the son might receive a probated sentence, was raised for the first time on the Amended Motion for Rehearing in The Court of Criminal Appeals (R. 32-40).

In this connection the Statement of Facts, being a transcript of the trial in the District Court, was tendered to the Court of Criminal Appeals in order to show that the trial in the lower court was no trial

at all, but a mere mockery (R. 41-81, printed in Appendix B, infra pp. 25-59).

The Court of Criminal Appeals permitted the filing of the Amended Motion but refused to permit filing of, or to consider, the transcript of the testimony in the trial court (opinion, R. 85-86); even though petitioner contended the Texas Statutes (Texas Code of Criminal Procedure, Art. 759a, Sec. 1, E) makes it the duty of the trial judge to file a statement of facts.

On Second Motion for Rehearing (Paragraph 3, R. 89), petitioner presented the point that the interpretation placed by The Court of Criminal Appeals denied petitioner a fair trial, by prohibiting the consideration of the transcript of the testimony by the appellate court, and thus prevented petitioner the opportunity of demonstrating that he had been denied due process and had not had a fair trial in the trial of his case below. In McBee v. United States, 361 U.S. 537, the Supreme Court held that an appellant "is as a matter of due process 'assured of some appropriate means' of making manifest the basis of his claim that the District Court committed error".

Questions Presented

1. In a case where the petitioner and his son were both indicted, the son for embezzlement from an insurance company of property over $50.00, and the father for selling an unregistered security (Cause No. 34,053) and also for embezzlement from

the insurance company of property over $50.00 (Cause No. 34,054); and the petitioner and his son were represented by the same attorney; and petitioner, on the advice of said attorney, pled guilty to both offenses of which he was charged in order that his son might receive a probated sentence in his offense; and no trial was actually held, but both cases were heard together without any testimony except from petitioner and his son, without affidavits or other testimony of guilt, but upon stipulation of counsel as to what witnesses would testify if present; and the petitioner received two years in one case and three years in the other, the offenses running consecutively (a total of five years); whether the petitioner had effective assistance of counsel; and whether his trial was no trial at all and he was denied due process, when there was no interrogation of witnesses, and no witnesses at the trial, and counsel stipulated what witnesses would swear to, and no defense was made, and counsel advised petitioner to plead guilty without contacting witnesses and going into petitioner's actual guilt, and counsel failed to perfect and prosecute an appeal.

2. Whether petitioner, on appeal by other counsel, was denied due process of law in The Court of Criminal Appeals, by the refusal of the appellate court to consider the record of the trial so that petitioner could demonstrate his trial was a mere moc ery.

Statutes Involved

The Constitution of The United States, and the Fourteenth Amendment thereto, are not printed.

No Federal Statute is involved.

The Constitution, Statutes, and Court Rules of the State of Texas are involved:

Constitution of Texas, Article 5, Sec. 5, printed in Appendix A, infra pp. 13-14.

Vernon's Texas Civ. Stats. (1948, as amended), Art. 1806, printed in Appendix A, infra p. 14.

Rules of The Court of Criminal Appeals, Rule VI, (Vernon's Tex. Code of Cr. Pr., Vol. 3, pocket parts 1961, p. 127-128), printed in Appendix A, infra pp. 14-15.

Vernon's Tex. Civ. Stats. Article 581, Sec. 29, prior to amendment by Acts of 1961, p. 1047, printed in Appendix A, infra pp. 15-16.

Vernon's Texas Code of Criminal Procedure, Article 759a, Sec. 1, E, being the Acts of 1951, 52nd Tex. Leg., p. 819, Ch. 465, printed in Appendix A. infra pp. 16-17.

Statement

The petitioner was tried in The Criminal District Court No. 2, Dallas Coutnty, Texas, in Cause Number D-1933-I, State of Texas v. W. L. Bridges, Sr., (R. 13), under an indictment, which went to the jury upon the second count for sale of unregistered securities (R. 12). The Texas Statute is Vernon's Tex. Civ. Stats., Article 581, Sec. 29, printed in Appendix A, infra pp. 15-16.

The petitioner pled guilty, waived a jury, and was sentenced to two years. (R. 17-18)

At the same hearing petitioner was tried in Cause Number D-1934-I (being Cause Number 34,054) in the Court of Criminal Appeals and in which Petition for Certiorari is filed in this Court together with this Petition); and also at the same hearing, petitioner's son was tried in Cause Number D-1932-I in the same court (R. 41-81).

The parties could not agree upon a statement of facts (transcript of the evidence) within seventy-five (75) days as provided by the Texas statute, and the Trial Judge failed to prepare and certify to a statement of facts as required by the statute (Art. 759a, Sec. 1, E. printed in Appendix A, infra pp. 16-17; see affidavit Amended Motion for Rehearing, printed in Appendix B, infra p. 25).

The time was extended for filing and approved four different times, until July 14, 1961 (R. 20-23); but no statement of facts was ever prepared and certified to by the "trial judge".

The Court of Criminal Appeals held that the burden is upon the appellant to see that the trial judge files the statement of facts. (R. 86)

The petitioner tendered the statement of facts as prepared and certified to by the Official Court Reporter and the petitioner's attorney on appeal, but not approved by the State's Attorney or the trial

judge. (R. 73) The Court of Criminal Appeals refused to consider it. (R. 86)

The Statement of Facts is printed in Appendix B, infra pp. 25-59.

The Court of Criminal Appeals has affirmed petitioner's conviction (R. 27-30, opinion printed in Appendix B, infra pp. 17-19); and rehearing overruled (R. 85-87); and second motion overruled. (R 93)

Reasons For Granting The Writ

The petitioner in this case (cause number 34,053, in the Texas Court of Criminal Appeals) was denied even a semblance of a trial.

Petitioner and his son, W. L. Bridges, Jr., were indicted in connection with the same transaction in causes D-1932-I, D-1933-I, and D-1934-I. The cases were all heard together, and upon the advice of counsel who represented both the petitioner and his son, petitioner shouldered the entire blame, and he received two years in Cause No. D-1933-I, and three years in Cause No. D-1934-I. His son received a probated sentence. There was not even a semblance of a trial. Petitioner testified and took the blame. Counsel testified what certain witnesses would testify to. The son testified that he had never been convicted of a felony. (R. 37-38, affidavit of petitioner printed in Appendix B, infra p. 25).

Under the Texas Constitution and Statute, Constitution Article 5, Sec. 5, printed, infra pp. 14-15,

and Article 1806, printed, infra p. 14, the Court of Criminal Appeals may consider affidavits to determine its jurisdiction. They had the power to determine whether petitioner received a trial, or was subjected to a mere mock trial.

It was the duty of the trial judge to prepare and certify to the Statement of Facts, after the parties failed to agree in seventy-five (75) days. See: Vernon's Tex. Code of Cr. Pr., Art. 759a, Sec. 1, E. printed infra pp 16-17. But though the approval was a mere formality, since the statement of facts was prepared by the official Court Reporter, the Court of Criminal Appeals refused to consider it.

The petitioner was entitled to some memoranda, as essential to due process, to demonstrate to the appellate court, and this Court, that he did not have a fair trial. This Court in a similar case, McBee v. United States, 361 U.S. 537, reversed the lower court and approved the dissenting opinion of Judge Bazelon in 261 F. 2d 744, and directed reconsideration in light of Johnson v. United States, 352 U.S. 565, where it was held that while the United States is not forced to furnish the defendant with a stenographic transcript of the trial, he is as a matter of due process "assured of some appropriate means" . . . . "of making manifest the basis of his claim that the district court committed error."

The Texas Statute, in case of failure to agree within seventy-five (75) days, requires the district judge to prepare and certify to a statement of facts. Where he has refused to do so, what more "appropri-

ate means" could there be to manifest the error in the trial than a transcript of the proceedings certified to by the official court reporter on the trial court.

The question is basic. Did the appellant get a fair trial, or did he instead get no trial at all?

It is elementary that as part of due process, defendant is entitled to effective assistance of counsel. Johnson v. Zerbst, 304 U.S. 458. This is equally well settled by the Court of Criminal Appeals in Martinez v. State of Texas, 318 S.W. 2d 66, not yet officially reported.

Quoting from Porter v. United States, 298 F. 2d 461 (5th Cir.), our case is "not the sterile one of a defendant claiming that his lawyer could not give unfettered loyalty to his interests merely because he represented other people, good or bad", but our situation goes further. Under the advise of counsel representing both petitioner and petitioner's son, petitioner agreed to "take the rap" for his son. The attorney advised and permitted petitioner to do this, without interviewing or calling witnesses, and by stipulating what absent witnesses would testify to. Such a trial is a mere mockery. See: Frand v. United States, 301 F. 2d 102; Mitchell v. United States, 259 F. 2d 787; Black v. United States, 269 F. 2d 38; Stanley v. United States, 239 F. 2d 765; and Washington v. United States, 297 F. 2d 342.

"The Constitution assures a defendant effective representation by counsel *whether the attorney is*

one of his own choosing or court appointed." (Emphasis ours). See: Porter v. United States, (5th Cir.), 298 F. 2d 461.

The last case cites and relies upon Glasser v. United States, 315 U.S. 60; and Johnson v. Zerbst, 304 U.S. 458; and Johnson v. United States, 352 U. S. 565.

The Fifth Circuit has had this question of effective counsel before it in a series of cases from the State of Texas, and has adhered strictly to the pilot cases by the Supreme Court and Martinez v. State of Texas, 318 S.W. 2d 66. See: McKenna v. Ellis, 263 F. 2d 35; McKenna v. Ellis, 280 F. 2d 592; McKenna v. Ellis, (by court in blanc) 289 F. 2d 928; and McKenzie v. Ellis, 287 F. 2d 549, (reversing 185 F. Supp. 931), where the Martinez rule as to an attorney not in good standing was expressly approved by the appellate court.

Under the circumstances of petitioner's case, the Court of Criminal Appeals of Texas should not have closed its eyes and refused to look at the Court Reporter's transcript of the testimony, in order to determine whether petitioner because of his counsel, had no trial at all, but was shoved off to the penitentiary in an informal agreement between the attorney and the State and the petitioner.

Conclusion

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Hume Cofer

HUME COFER

John D. Cofer

JOHN D. COFER
1408 Capital National Bank Bldg.
Austin 1, Texas

ATTORNEYS FOR PETITIONER

June 20, 1962

OF COUNSEL:

DOUGLASS D. HEARNE
Of Austin, Texas

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition for Writ of Certiorari has been served upon Respondent by depositing the same in a United States post office, with first class air mail postage prepaid, addressed to the counsel of record for Respondent, namely Hon. Leon Douglas, States Attorney for the Court of Criminal Appeals.

John D. Cofer

John D. Cofer
Counsel for Petitioner

ENTRY OF APPEARANCE

The undersigned, Hume Cofer, and John D. Cofer, 1408 Capital National Bank Building, Austin 1, Texas, both members of the Bar of the Supreme Court of the United States, hereby enter their appearance in the captioned cause on behalf of Petitioner. Douglass D. Hearne, 1408 Capital National Bank Building, Austin 1, Texas, is of counsel.

Hume Cofer

Hume Cofer

John D. Cofer

John D. Cofer
Counsel for Petitioner

APPENDIX A

CONSTITUTION OF TEXAS (VERNON'S ANN.), ART. 5, SEC. 5:

"ART. 5:

"SEC. 5. JURISDICTION OF COURT OF CRIMINAL APPEALS; TERMS OF COURT; CLERK

"Sec. 5. The Court of Criminal Appeals shall have appellate jurisdiction co-extensive with the limits of the State in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law.

"The Court of Criminal Appeals and the Judges thereof shall have the power to issue the writ of habeas corpus, and under such regulations as may be prescribed by law, issue such writs as may be necessary to enforce its own jurisdiction. The Court of Criminal Appeals shall have power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction. The Court of Criminal Appeals shall sit for the transaction of business from the first Monday in October to the last Saturday in June in each year, at the State capital and two other places (or the capital city) if the Legislature shall hereafter so provide. The Court of Criminal Appeals shall appoint a clerk for each place at which it may sit and each clerk shall give bond in such manner as is now or may hereafter be required by law, and who shall

hold his office for four years unless sooner removed by the court for good cause entered of record on the minutes of said court. As amended Aug. 11, 1891; proclamation Sept. 22, 1891."

VERNON'S TEXAS CIV. STATS. (1948):

"ART. 1806. 1661, 1054. MAY ASCERTAIN FACTS.

"Said court (Court of Criminal Appeals) shall have the power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction."

RULES OF THE COURT OF CRIMINAL APPEALS, ADOPTED AND RE-ADOPTED MARCH 20, 1958. NO AMENDMENTS TO DATE (Vernon's Tex. Code of Cr. Pr., Vol. 3, pocket parts 1961, p. 127-128).

"VI. Any party desiring a rehearing of any matter determined by the Court of Criminal Appeals may, within fifteen days after the opinion is handed down, file with the Clerk of said Court his motion in writing for a rehearing thereof, distinctly specifying the grounds relied upon for the rehearing.

"If the Court hands down an opinion in connection with the overruling of a motion for rehearing, a further motion for rehearing may be filed by the losing party within fifteen days after such opinion is handed down; but a further motion for rehearing shall not be made as a matter of right in any other case.

"Any motion for rehearing may be amended any time before the expiration of the fifteen-day period allowed for filing it, and with leave of the Court any time before its final disposition.

"All motions and other matters filed in the Court of Criminal Appeals and not disposed of at the end of the term shall be automatically continued to the next succeeding term of said Court."

VERNON'S TEX. CIV. STATS., ARTICLE 581-29, (Acts of 1957, 55th Leg., Ch. 269 p. 575, Sec. 29, before amended by the Acts of 1961, p. 1047)

"SEC. 29. PENAL PROVISIONS.

"Any dealer, agent, salesman, principal officer, or employee who shall, within this state, sell, offer for sale or delivery, solicit subscriptions to or orders for, dispose of, invite offers for, or who shall deal in any other manner in any security or securities, without being registered as in this Act provided, or who shall within this state sell, offer for sale or delivery, solicit subscriptions to and orders for, dispose of, invite orders for, or who shall deal in any other manner in any security or securities issued after the effective date of this Act, except for advertising made in compliance with Section 22 of this Act, without having secured a permit, or having complied with Section 7 of this Act, as herein provided, or who knowingly sells or offers for sale any security or securities named or listed in a notice in writing given him by the Commissioner that in the opinion of the Commissioner the further sale or offer

for sale of the security or securities named or listed in such notice would not be in compliance with this Act or would tend to work a fraud on any purchaser thereof or that the plan of business of the issuer of such security or securities is not fair, just and equitable, or who knowingly makes any false statement of fact in any statement or matter of information required by this Act to be filed with the Commissioner, or in any advertisement, prospectus, letter, telegram, circular, or any other document containing an offer to sell or dispose of, or in or by verbal or written solicitation to purchase, or in any commendatory matter concerning any securities, with intent to aid in the disposal or purchase of the same, or who knowingly makes any false statement or representation concerning any registration made under the provisions of this Act, or who is guilty of any fraud or fraudulant practice in the sale of, offering for sale or delivery of, invitation of offers for, or dealing in any manner in any security or securities, or who shall knowingly participate in declaring, issuing or paying any cash dividend by or for any person or company out of any funds other than the actual earnings of such person or company or from the lawful liquidation of the business thereof, shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than One Thousand Dollars ($1,000.00), or imprisoned in the penitentiary for not more than two (2) years, or by both such fine and imprisonment."

VERNON'S TEX. CODE OF CRIM. PROC., 759a, SEC. 1, E (Acts of 1951, p. 819)

"E. If the Statement of Facts is agreed to by the defendant or his counsel, and the attorney representing the state, it need not be approved by the court. If the parties cannot agree on a Statement of Facts within seventy-five (75) days after giving of notice of appeal, the trial judge shall prepare and certify to a Statement of Facts. Acts 1951, 52nd Leg., p. 819, Ch. 465."

APPENDIX B

1. OPINION OF THE COURT OF CRIMINAL APPEALS OF JANUARY 3, 1962 (R. 27-29).

"Appellant was convicted upon a plea of guilty before the court without a jury under The Securities Act, Art. 581-1, V.A.C.S., for the offense of the unlawful sale of securities and his punishment assessed at confinement in the penitentiary for two years.

"No statement of facts of the evidence adduced upon the trial accompanies the record and there are no bills of exception.

"Appellant's sole contention on appeal is that the indictment fails to charge an offense because it did not negative the exempt transactions enumerated in sec. 5 of The Securities Act. The contention is urged as fundamental error, no exception or motion to quash the indictment having been filed by appellant in the trial court.

"In Baker vs. State, 132 Tex. Cr. R. 527, 106 S.W. 2d 308, Judge Lattimore speaking for this

Court, in announcing the rule with reference to the necessity of negativing statutory exceptions in charging an offense in an indictment said:

> 'From what we have said above, and as far as we have been able to ascertain, our courts have uniformly held that when the Legislature sees fit to create exceptions to the general penal provisions of a statute if such exceptions be placed in a separate section or article from the one containing the definition of the offense, or if they be not such as to be essential to the definition of the offense, it will not be necessary to negative such exceptions in the indictment charging such offense. . . .'

"See also 1 Branch's Ann. P. C. 2d Ed. par. 530, p. 508, and cases there cited.

"An examination of The Securities Act clearly reflects that the exempt transactions, separately enumerated in sec 5 thereof, are not a part of the offense of unlawfully selling securities as defined in other sections of the Act. It was not necessary that the indictment negative the exempt transactions enumerated in sec. 5 of the Act in charging appellant with the offense.

"The allegations contained in the second count of the indictment under which appellant stands convicted are sufficient to charge an offense under the Act.

"The judgment is affirmed."

2. JUDGMENT AFFIRMING (R. 30).

"This cause came on to be heard on the transcript of the record of the Court below, and the same being inspected, because it is the opinion of this Court that there was no error in the judgment, it is ordered, adjudged and decreed by the Court that the judgment be in all things affirmed, and that the appellant pay all costs in this behalf expended, and that this decision be certified below for observance."

3. APPELLANT'S AMENDED MOTION FOR REHEARING AND STATEMENT OF FACTS TENDERED WITH SUCH AMENDED MOTION FOR REHEARING (R. 34-80).

"AMENDED MOTION FOR REHEARING.

"Now comes the appellant and, with leave of Court first had and obtained, files this his Amended Motion for Rehearing, so that his Motion for Rehearing, as amended, shall hereinafter read as follows:

"1. The Securities Act which appellant is accused of violating is unconstitutional for the reason that it deprives him under the circumstances of this case to sell his own stock and property and securities, and denies him the equal protection of the law under the Constitutions of Texas and the United States.

"2. The appellant, under the Constitution and Laws of the State of Texas, and the United States,

has the right, and had the right, to dispose of his personal property towit, shares of stock of Dallas Pega Palo Distributors, Inc., which shares were his own property, and the Texas Securities Act if denying him such right, denied him the equal protection of the law under the Constitutions of Texas and the United States.

"3. The indictment in cause number 34,054 is defective because it does not allege any intent to deprive the owner, whoever that might be, and who is not stated in the indictment, of the use and benefit of the property alleged to have been embezzled. For that reason the action of the trial court and this Court has denied him due process of law under the Constitutions and laws of Texas and the United States.

"4. Under the Constitutions and Laws of Texas and the United States the appellant has the right to be tried by due process of law, and due process is denied him because the indictment in cause number 34,054 does not charge him with a felony offense in clear and intelligible and specific language, in that it is not alleged that he is not the owner of Hughes Imperial Funeral Insurance Company, and it is not made to appear that the property he is alleged to have embezzled was not his own property.

"5. As to both causes, numbers 34,053 and 34,054, appellant and his counsel, Robert B. Billings, as affiants respectfully show the Court that the District Clerk of Dallas County, Texas, has failed and refused to place the file marks on the Statement

of Facts in these two cases as required by law, and has refused to transmit with the respective Transcripts in these two cases the Statement of Facts in said cases.

"Appellant shows this Court that the said two cases were tried together at the same time and one transcript was taken and prepared in both cases.

"Notice of appeal was given and entered in the minutes in each case on March 6th, 1961. (Tr. number 34,053, p. 14-15; number 34,054, p. 13-14)

"Within the time required by law, for good cause the time for filing the Statement of Facts in each case was extended until June 26th, 1961 (Tr., number 34,053, p. 17; number 34,054, p. 16); and further extended until June 30th, 1961 (Tr., number 34,053, p. 18; number 34,054, p. 18); and further extended until July 10th, 1961 (Tr., number 34,053, p. 19; number 34,054, p. 17); and further extended to July 14th, 1961 (Tr., number 34,053, p. 20; number 34,054, p. 19).

"On June 28th, 1961 the Statement of Facts covering both cases was completed and certified to by Honorable Paul T. Bastas, Official Court Reporter, Criminal District Court Number Two, Dallas County, Texas, and defendant's counsel, Robert B. Billings, affiant hereto, on the 29th day of June, 1961, approved, signed, and agreed to same, and filed the same and personally presented the same to the Honorable Henry King, Presiding Judge in this case. The District Judge, and the District

Attorney, failed, within the time required by law, to approve said Statement of Facts, and the Court failed to file its own Statement of Facts, and at the expiration of the time required by law, the Statement of Facts as prepared by the Court Reporter and agreed to by defendant and his counsel became the Statement of Facts in these cases, and it was the duty of the District Clerk to transmit the same as part of the record in this case.

"Appellant now presents said Statement of Facts, together with this Motion, and asks this Court to accept and file the same.

"6. An examination of the Statement of Facts shows that this appellant, W. L. Bridges, Sr., was tried in those two cases for both offenses, together with his son, W. L. Bridges, Jr., at the same time and in one trial and one proceeding, and that this appellant, on the advise of his counsel, shouldered all the blame in both cases, and received two years and three years respectively, and that W. L. Bridges, Jr., received a probated sentence. It appears that Mr. Fred Bruner and Mr. Dave McCord, attorneys at law, represented both W. L. Bridges, Sr., and W. L. Bridges, Jr., in said proceeding, and that this defendant pleaded guilty in both cases upon the advise of said two attorneys, who also represented his son, W. L. Bridges, Jr.

"It appears from the Statement of Facts that the vital interests of appellant and of W. L. Bridges, Jr., were in serious conflict, and that appellant, W. L. Bridges, Sr., was entitled, in considering whether

he should enter a plea of guilty, to fair and impartial counsel. Said attorneys, because of the conflicting interests of the two defendants, were disqualified to act for, consult with, and advise appellant on his plea of guilty. As a result he lacked effective assistance of counsel in failing to interrogate witnesses, in failing to take steps to have witnesses present at the trial, in agreeing to what witnesses would swear to, without witnesses being present, and without testimony at least in affidavit form, and in conducting only a half-hearted defense of appellant, and in advising him to plead guilty without thoroughly contacting witnesses and going into appellant's actual guilt, and in immediately bowing out and making a hasty retreat, and in failing to perfect and present an appeal; and further because of the insensitivity of the State's attorney and the Court to the need of protecting defendant's right to fairly arrive at a determination as to his actual guilt.

"Such purported trial and proceedings denied appellant a fair trial, and a fair opportunity to arrive at an advised decision to plead guilty, and denied him a fair trial, and equal protection of the law, and due process of law under the Constitutions of Texas and the United States.

"In support of the foregoing proposition appellant cites:

"Martinez v. State, 167 Tex. Cr. Rep. 97, 318 S.W. 2d 66.

"Johnson v. Zerbst, 304 U.S. 458, 82 L. ed. 1461, 58 S. Ct. 1019.

"Johnson v. United States, 352 U.S. 565, 1 L. ed. 2d 593, 77 S. Ct. 550.

"McBee v. United States, 361 U. S. 537, 4 L. ed. 539, 80 S. Ct. 915; lower court opinion, 261 F. 2d 744.

"McKenna v. Ellis, (5th Cir.), 280 F. 2d 592.

"McKenna v. Ellis, (5th Cir.), 263 F. 2d 35.

"McKenzie v. Ellis, (5th Cir.), 287 F. 2d 549 reversing 185 F. Supp., 931.

"7. Wherefore appellant prays that the Statement of Facts presented herewith be filed in this Court as part of the record, and that this Court grant a rehearing in these causes, and that these two cases be reversed and remanded for a new trial

"Respectfully submitted,

"ROBERT B. BILLINGS
709 Davis Building
1309 Main Street
Dallas, Texas

"V. F. TAYLOR
Perry-Brooks Building
Austin, Texas

"DOUGLASS D. HEARNE
COFER & COFER
1408 Capital Nat'l Bank Bldg.
Austin, Texas

"By /s/ Robert B. Billings
Attorneys for Appellant

"I, W. L. Bridges, Sr., being duly sworn, on oath, states that I am the appellant in cause numbers 34,053 and 34,054 in the Court of Criminal Appeals, and that I am familiar with the facts stated in paragraph 5 of the foregoing Motion, and said facts are true.

"/s/ W. L. Bridges, Sr.

"Subscribed and sworn to before me, the undersigned authority, this 15th day of February, A. D. 1962.

"/s/ Kent D. Allen
Notary Public in and for
(SEAL) Dallas County, Texas
"/s/ Kent D. Allen

"I, Robert B. Billings, being duly sworn, on oath, state that I am one of the attorneys on appeal in cause numbers 34,053 and 34,054 for the appellant, and that I have authority to make this affidavit, and am familiar with the facts stated in paragraph 5 of the foregoing Motion, and said facts are true.

"/s/ Robert B. Billings

"Subscribed and sworn to before me, the undersigned authority, this 15th day of February, A. D. 1962

"/s/ Madeline Litherland
(SEAL) Madeline Litherland
Notary Public in and for
Dallas County, Texas

STATEMENT OF FACTS

"APPEARANCES:

"MR. HENRY WADE, Criminal District Attorney, Dallas County, Texas.

"By Messrs: William Alexander and Ben Elliss, Assistant District Attorneys, on behalf of the State of Texas.

"MR. FRED BRUNER, Dallas, Texas
and
"MR. DAVE McCORD, Dallas, Texas
On behalf of the Defendants.

"BE IT REMEMBERED, That upon this, the 6th day of March, 1961, the above entitled and numbered causes came on to be heard before his Honor, HENRY KING, Judge of said Criminal District Court No. 2, Dallas County, Texas, on a plea of guilty before the Court, that the following is a full, true and correct and complete transcript in Question and Answer form, of all the proceedings had upon the trial of the above numbered and entitled causes:

"PROCEEDINGS

"THE COURT: Both of you gentlemen come up here, W. L. Bridges, Jr., and W. L. Bridges, Sr.

"Now, this No. D-1978-I, Mr. Alexander, you are withdrawing that one, are you not?

"MR. ALEXANDER: We are dismissing that.

"THE COURT: W. L. Bridges, Jr., that is your name is it not?

"MR. BRIDGES, JR.: Yes, sir.

"THE COURT: Now, you stand charged by indictment in this Court in Cause No. D-1932-I, styled

the State of Texas versus W. L. Bridges, Jr., in two counts of that indictment.

"One of them, the first one, charges you with the offense of theft of personal property over the value of $50.00, and the second count charges you with the offense of embezzling personal property over the value of $50.00, and the second count charges you with the offense of embezzling personal property over the value of $50.00.

"Now, the State of Texas through it's attorney, Mr. Alexander has filed a motion in this case requesting the Court to dismiss from the indictment, the first count charging theft, which the Court has granted; so that count is now out of the indictment. So, you stand charged by this particular indictment now, in the second count thereof, with the offense of embezzlement of personal property over the value of $50.00.

"Now, you have talked to your attorneys, Mr. Fred Bruner, and Mr. Dave McCord about both of these counts in the indictment, and I want to know—especially about the second count charging you with embezzlement, have you not?

"MR. BRIDGES, JR.: Yes, sir.

"THE COURT: And you know and understand exactly what you are charged with in the second count of that indictment, do you not?

"MR. BRIDGES, JR.: Yes, sir.

"THE COURT: Are you guilty of that charge, Mr. Bridges?

"MR. BRIDGES, JR.: Yes, sir.

"THE COURT: When the State's lawyer reads the indictment to you in Court, then I take it you are going to plead guilty to the second count of that indictment?

"MR. BRIDGES, JR.: Yes, sir.

"THE COURT: Now, at that time will you be pleading guilty of your own free will and accord?

"MR. BRIDGES, JR.: Yes, sir.

"THE COURT: No one has used any force, violence, threats, coercion, promises, anything like that to force or make you plead guilty to the indictment, have they?

"MR. BRIDGES, JR.: No, sir.

"THE COURT: And you are not pleading guilty to the indictment because you think if you do you will be pardoned or paroled?

"MR. BRIDGES, JR.: No, sir.

"THE COURT: Very well. When this indictment is read to you in Court now, and you enter your plea of guilty to that second count, like you say you will, the Court at that time will accept your plea of guilty, and if the State proves it, of course, but they have

to prove the case against you by evidence beyond a reasonable doubt, you understand that Mr. Bridges, and if they do that, then the court will find you guilty and fix your punishment somewhere within the range of punishment as provided by law, and the punishment for this offense, that I just outlined to you, is by confinement in the penitentiary for not less than two (2) years or more than ten (10) years, so, your penalty will be somewhere in that punishment.

"Now, let us see, I believe in this case you have made an application, or you have requested that whatever sentence I give you be probated?

"MR. BRIDGES, JR: Yes, sir.

"THE COURT: Now, you state in your application for probation, which is in writing and sworn to by you, that you have never before beeen convicted of a felony in Texas or any other state?

"MR. BRIDGES, JR: Yes, sir.

"THE COURT: I am sure you have talked to your lawyers about the felony, and what it is, but I will define it to you so I am sure you understand it. A Felony is any offense the punishment for which may be confinement in the penitentiary. In other words if you have ever been tried for an offense where you could have been sent to the penitentiary, that is a felony.

"Now, have you ever been convicted of a felony in Texas or any other state?

"MR. BRIDGES, JR: No, sir.

"THE COURT: Have you ever been granted a suspended sentence or been placed on probation for a felony by any other Court at any time?

"MR. BRIDGES, JR: No, sir.

"THE COURT: Very well. Is your client going to testify Mr. Bruner, Mr. McCord?

"MR. BRUNER: Yes, sir he will, your Honor.

"THE COURT: All right, raise your right hand and take this oath as a witness in this case.

(WHEREUPON THE WITNESS WAS SWORN BY THE COURT.)

"THE COURT: With reference to the probation matter, you understand that will be a matter to be decided by the Court, and you will not know about that until after the case is over, and after the evidence is all in.

"MR. BRIDGES, JR: Yes, sir.

"THE COURT: I have been informed that is, I understand that Mr. W. L. Bridges, Sr., is going to enter a plea of guilty to two cases here against him. I also understand that you want to try these cases all together, now, I want to know Mr. McCord, and Mr. Bruner, does your client W. L. Bridges, Jr., want to try his with W. L. Bridges, Sr. cases?

"MR. BRUNER: Both cases together.

"THE COURT: Both defendants want to try all the cases together?

"MR. BRUNER: Yes, sir.

"THE COURT: You can have a seat over there Mr. W. L. Bridges, Jr.

"Now, I believe that the last time I talked to you you said you were a little hard of hearing. Can you hear me now?

"MR. BRIDGES, SR: Yes, sir.

"THE COURT: You can hear what I am saying?

"MR. BRIDGES, SR: Yes, sir.

"THE COURT: Now, your name is W. L. Bridges, Sr.?

"MR. BRIDGES, SR: Yes, sir.

"THE COURT: You stand charged by indictment Mr. Bridges with two felony charges. One of them is Numbered D-1933-I, they have it Junior here, it should be Senior?

"Is the indictment marked right?

"MR. ALFXANDER: That is Senior.

"THE COURT: and shows that in the indictment?

"MR. ALEXANDER: Yes, sir.

"THE COURT: All right. As I started to say, you stand charged by indictment in Cause No. D-1933-I, styled the State of Texas versus W. L. Bridges, Sr., with the offense of the unlawful sale of securities, unlawful sale of securities; and in Cause No. D-1934-I you stand charged by indictment in that cause, Mr. Bridges, in two counts.

"The first one with theft of personal property over the value of $50.00, and in the second count—I believe there is three counts—there is three counts in this indictment, and in the second count you are charged with embezzlement, and the third count is, I believe, it is a form of embezzlement, is it not Mr. Alexander?

"MR. ALEXANDER: Yes, sir.

"THE COURT: You are charged with three counts. Now, the State has filed a motion requesting the Court to dismiss the first and third counts, the one of theft and the other, the third one is a form of embezzlement, whatever it is, two counts are being dismissed, and that leaves you charged now in the second count of the indictment with the offense of embezzlement.

"Now, you have talked to your attorneys, Mr. Bruner and Mr. McCord about both of these indictments, that is the sale of securities, and about the second count of this last indictment, charging you with embezzlement, have you not, Mr. Bridges?

"MR. BRIDGES, SR: Yes, sir.

"THE COURT: And you know and understand exactly what you are charged with now, in that securities sale, securities case and also the second count charging embezzlement, do you not?

"MR. BRIDGES, SR: Yes, sir.

"THE COURT: Now, are you guilty of those two charges?

"MR. BRIDGES, SR: Yes, sir.

"THE COURT: And when the indictments are read to you in open Court, I take it you are going to plead guilty to them, is that correct?

"MR. BRIDGES, SR: Yes, sir.

"THE COURT: Now, at that time will you be pleading guilty of your own free will and accord?

"MR. BRIDGES, SR: Yes, sir.

"THE COURT: No one has used any force, violence, threats, coercion, promises or anything like that to get you to make your plea of guilty?

"MR. BRIDGES, SR: No, sir.

"THE COURT: In other words it is voluntary?

"MR. BRIDGES, SR: That is right.

"THE COURT: And you are not pleading guilty to the indictments because you think if you do that you will be pardoned or paroled, that is not the reason?

"MR. BRIDGES, SR: No, sir.

"THE COURT: Very well, the Court will accept your plea of guilty in each of these cases now, if you make such a plea, and if the State proves both cases on you beyond a reasonable doubt, you will be found guilty, Mr. Bridges, and your punishment will be assessed somewhere within the range of punishment as provided by law.

"The punishment for embezzlement is by confinement in the penitentiary for not less than two (2) nor more than ten (10) years.

"Now, the punishment for the unlawful sale of securities is by a fine of not more than one thousand dollars, ($1,000.00) or by confinement in the penitentiary for not more than two (2) years or by both such fine and imprisonment.

"So, your penalty will be assessed somewhere within that bracket.

"Now, is you client going to testify, counsel?

"MR. BRUNER: Yes, sir.

"THE COURT: Raise your right hand and be sworn as a witness in this case, these cases.

(Whereupon the witness was sworn by the Court. W. L. Bridges, Sr.)

"THE COURT: Put your hand down, now, before you sit down let me see of there is two counts in this 1933. There were two counts in that indictment and they are dismissing the first count of that indictment, so your are being charged by the second count in Cause No. D-1933-I, and I am going, I am granting this motion here and now, so you understand both counts, you know what they are, and you have talked to your lawyers about that?

"MR. BRIDGES, SR.: Yes, sir.

"THE COURT: Your plea is going to be guilty to that second count?

"MR. BRIDGES, SR.: Yes, sir.

"THE COURT: Very well, you have a seat over that—over at the counsel table.

"Will the State's Lawyer please read all three of these indictments, the parts that are pertinent to what they are being tried on.

"MR. BRUNER: Your Honor, the defendants by and through their attorney and attorneys agree that the pertinent parts of the indictments in these cases may be waived and the reading of the indictments might be waived—

"THE COURT: Are they waived?

"MR. BRUNER: They are waived, and it won't be necessary to present the indictments before the court, and we would like to state we would enter—we enter into an stipulation with the State that it won't be necessary for witnesses to be here and present in Court. It has been explained to the clients, that—Mr. Bridges, Jr., and Mr. Bridges, Sr., that they have a right to have witnesses present and appear in court, and they waive that right, and agree that the—

"THE COURT: That is both for and against them?

"MR. BRUNER: Yes, sir, both for them and against them, and we have advised them on that, and it is agreeable that the State's case may be presented to the Court on stipulated testimony of witnesses as if they were present in Court, we will enter into that stipulation with them, and again enter a plea of guilty to the counts of the indictments as charged.

"THE COURT: Counts they are standing on. In other words—

"MR. BRUNER: That is right.

"THE COURT: I believe in No. 34 it is the second count isn't it?

"MR. BRUNER: That is right.

"THE COURT: And I believe in the other, in Mr. Bridges, Sr., case it is the last count, the 2nd

Count and in Mr. Bridges, Jr., I believe it is the second count of his indictment, is that right?

"MR. BRUNER: That is correct, your honor.

"THE COURT: Now, Mr. Bridges, Sr., you have heard Mr. Bruner make these waivers of certain legal rights you have in these cases, which the law gives you, in these two cases which you have on trial and enter and agree to stipulate the testimony and enter a plea of guilty for you—you understand everything he said in your behalf, and you agree to it, do you not?

"MR. BRIDGES, SR.: Yes, sir.

"THE COURT: All right, Mr. Bridges, Jr., you also heard Mr. Bruner, make these waivers of rights for you, that is the presence of witnesses, for and against you, having stipulated testimony, the reading of the indictment, and entering a plea of guilty, you heard all those things he said and you understand and agree to them do you not?

"MR. BRIDGES, JR.: Yes, sir.

"THE COURT: All right go ahead with your agreed testimony, please.

"MR. ALEXANDER: In Cause No. D-1933-I, styled the State of Texas versus W. L. Bridges, Sr., it is stipulated by—and agreed by the respective counsel, and the defendant in open Court that were he present and sworn as a witness, Chester W. Kling-

man (Spelling) K-l-i-n-g-m-a-n would testify that he knows the defendant in this case, W. L. Bridges, Sr., and that on the first day of February, 1959 in Dallas County, Texas, that W. L. Bridges, Sr., sold to him 11,667 shares of the capital stock of Dallas Pega Palo Distributors Incorporated. That he received for his consideration stock certificate No. 301 of the stock records certificates of Dallas Pega Palo Distributors Incorporated.

"Were he present and sworn as a witness, William King would testify that he is the Securities Commissioner for the State of Texas, and that as such Securities Commissioner he has the care, custody, possession, control, supervision of and the responsibility for all the securities registration of capital stock in the State of Texas, and has had since at least 1955. He would further testify that on February 1, 1959, that Dallas Pega Palo Distributors Incorporated, was a corporation incorporated under the laws of the State of Texas, that Dallas Pega Palo Distributors Incorporated issued securities after the effective date of the Securities Act of the State of Texas. That on February 1, 1959, that the capital stock of Dallas Pega Palo Distributors Incorporated was not registered by or with the Securities Commission of the State of Texas; that the securities were not then and there registered in any manner with the Securities Commission of the State of Texas either by notification or by coordination, that such securities was not then and there duly registered security, registered as such by and with the Securities Commission of the State of Texas, That on

February 1, 1959 there was no permit for the sale of said security granted by the Securities Commission of the State of Texas.

"We offer into evidence as State's Exhibit No. 1, a certified, a photostatic copy of Stock Certificate No. 301 being for the amount of 11,677 shares of Dallas Pega Palo Distributors Incorporated, both front and back. Commissioner King would further testify that said stock certificate was not registered for sale with the State of Texas.

"MR. BRUNER: No objection.

(Whereupon said Document was so marked as requested, State's Exhibit No. 1, for identification.)

"THE COURT: Admit it.

(Whereupon said Document so marked as requested State's Exhibit No. 1, was received in evidence and is made a part of the record as of this day and date.)

"MR ALEXANDER: In Couse No. D-1932-I, styled the State of Texas versus W. L. Bridges, Jr., were he present in Court and sworn as a witness, George R. Russell would testify that, that on December 16, 1959, he had a conversation with the defendant, W. L. Bridges, Jr., wherein W. L. Bridges, Jr., had a conversation with his wherein it was decided that George R. Russell would make a purported loan

from the State National Life Insurance Company, that as security for the loan that he would put up certain property located near Tom Field Circle in Dallas County, Texas. That he sign a note and deed of Trust securing purportedly a loan of $30,000.00 from the State National Life Insurance Company, and that the Defendant in this case, W. L. Bridges, Jr., caused to be issued Check No. 131 on the account in the First National Bank of Richland, Texas, of the State National Life Insurance Company, and that he George R. Russell indorsed that check and did not receive anything from the check, that the check was given back to the Bridges.

"Were he present in Court and sworn as a witness, the cashier of the Industrial National Bank of Dallas, Texas, would testify that on December 17, 1959 that check No. 131 on the account of the State National Life Insuronce Company of Dallas, Texas, on the First National Bank of Richland, Texas, payable to George R. Russell, was deposited to the account of Commercial Discount Company, and that the December 1959 Bank Statement reflects such a deposit. He would further testify that the Commercial Discount Company is operated by W. L. Bridges, Junior and Senior. He would further testify that, on December 16, 1959, that check No. 1637 on the account of the Commercial Discount Company in the Industrial National Bank of Dallas in the amount of $30,000.00 was made to the W. L. Bridges Agency and cashed through the Texas Bank and Trust Company of Dallas, Texas, which check removed the $30,000.00 from the Commercial Discount

Company account which had been placed in such Commercial Discount Company account by check No. 131, payable to one George R. Russell, in the amount of $30,000.00. He would further testify that the W. L. Bridges Agency account is an account jointly operated by W. L. Bridges, Junior and Senior the defendants in this case.

"Were he present in Court and sworn as a witness R. B. Grammer, Jr. would he—would testify that he is the accountant and comtroller and was for Bridges at the time of the transaction of December 16, 1959. He would further testify that he made the journal entries—that he made the journal entries which reflected, which accounted for check no. 131 on the State National Life Insurance Account and Check No. 1637 on the Commercial Discount Company account in the Industrial National Bank of Dallas that he has reconciled bank statements of those various companies and that they accurately reflect disbursements and deposits.

"Were he present in Court and sworn as a witness Sam E. Stock would testify that he was examiner for the State of Texas State Insurance Commission that he examined the State National Life Insurance Company Books after liquidation ordered, that the $30,000.00 reflected by check No. 131 on the State National Life Insurance Company account in the First National Bank of Richland, Texas, payable to George R. Russell for $30,000.00, that the $30,000.00 appeared on the corporations books as notes receivable that the asset was originally listed, that the books of the company showed the notes received

reduced to $29,000.00 with nothing showing balancing the account as an asset.

"George R. Russell would further testify that at the time he executed the note and deed of trust for the purported $30,000.00 loan from State National Life Insurance Company, that at the same time he was given a release of his note and deed of trust, which in effect released his property from any claims of the insurance company, that the so called loan transaction was false and a fiction and done for the purpose of allowing W. L. Bridges, Jr., to remove from said insurance company, $30,000.00

"We offer into evidence as State's Exihibits 2, 3, 4, and 5, the check 131, check 1637, deposit slip and ledger account cards or bank statement is what it is.

(Whereupon said documents were so marked as requested State's Exhibits Nos. 2, 3, 4, and 5 for identification.)

"MR. ALEXANDER: That testimony also goes for D-1934-I, your Honor. In the interest of time, your Honor, I would like to introduce as State's Exhibit No. 6 and No. 7, the certified copies of excerpts from the transcript of proceedings before the Texas State Insurance Commisisoner, No. 6, being on the date of May 9, 1960 and No. 7, being under the date of May 13, 1960, that is approximately, being about over 100 pages of testimony.

"MR. BRUNER: No objections.

"THE COURT: Admit them. All of them.

(Whereupon said Documents so marked State's Exhibits 2-3-4-5-6 & 7 were admitted in evidence as of this date.)

"MR. ALEXANDER: And State's Exhibits 9 and 10.

(Whereupon said documents were so marked as requested State's Exhibits 9 and 10.)

"MR. ALEXANDER: Corporation minutes showing the status of—as officers of W. L. Bridges, Sr. and Jr.

"THE COURT: Any objection to that?

"MR. BRUNER: No, sir.

"THE COURT: Admit them.

(Whereupon said documents so marked as requested State's Exhibits Nos. 9 and 10, were received in evidence are made a part of the record as of this day and date.)

"MR. ALEXANDER: Were he present in Court and sworn as a witness Buddy Hughes would testify that on March 29, 1960 that W. L. Bridges, Sr., was an agent, servant and employee of the Hughes Imperial Funeral Insurance Company a local mutual aid association duly organized under the laws of the State of Texas.

"Were he present in Court and sworn as a witness Alvin Lane would testify that on the 16th day of December, 1959, that W. L. Bridges, Sr., was an officer, servant, agent and employee of the State National Life Insurance Company of Dallas, Texas, to-wit, President. He would further testify that State National Life Insurance Company is a corporation duly incorporated under the laws of the State of Texas.

"Were he to continue testifying Hughes would testify that on March 29, 1960 in Dallas County, Texas, that the defendant in this case, W. L. Bridges, Sr., unlawfully, embezzled—unlawfully, and fraudulently embezzled, misapplied and converted to his own use without the consent of the Hughes Imperial Funeral Insurance Company certain money of the aggregate value of over $50.00, to-wit: $20,000.00, belonging to the Hughes Imperial Funeral Insurance Company which money had come into the possession of, and was under the care of W. L. Bridges, Sr., by virtue of his employment as an agent, servant and employee, aforesaid.

"Were he present in Court and sworn as a witness, Alvin Lane would further testify that W. L. Bridges, Jr., on the 18th day of December, 1959, unlawfully, frauduently misapplied and converted to his own use without the consent of the State National Life Insurance Company, certain monies belonging to the said State National Life Insurance Company, a corporation, the sum of $30,000.00 which is of the aggregate value of over $50.00 and which money had come into the possession of and was under the

care of W. L. Bridges, Jr., by virtue of his employment as officer, agent, servant and employee. That the corporation did not consent to the taking of the $30,000.00 check which went through the hands of Mr. Russell, as stipulated, on into the Commercial Discount Company and out to the W. L. Bridges Agency which the Bridges had control of and removed the money from.

"It is stipulated and agreed that above and foregoing stipulation of testimony is substantially true and correct and that each respective offense occured in Dallas County, Texas on the dates and in the manners alleged in each respective indictment, the State Rests.

"MR. BRUNER: Call Mr. Bridges, Jr.

"W. L. BRIDGES, JR.

called as a witness in his own behalf, having been duly sworn, was examined and testified as follows:

"EXAMINATION
BY MR. BRUNER:

"Q Your name is W. L. Bridges, Jr.?

"A Yes, sir.

"Q And what age man are you?

"A 43.

"Q You have heard the stipulation of the testimoney as stipulated by Mr. Bill Alexander of the

District Attorney's Office, is that testimony substantially true and correct?

"A Yes, sir.

"Q You are entering your plea of guilty to the indictment as charged?

"A Yes, sir.

"Q Before the Court. Have you ever been convicted of a felony in this State or any other State?

"Q Have you ever been given a suspended sentence or probated sentence in this State or any other State or in the Courts of the United States?

"A No, sir.

"Q You have made application to the Court here, for the probation of any sentence that the Court might impose, and I believe that it has been explained to you the conditions under which the probated sentence would be permitted?

"A Yes, sir.

"Q You have read those, in other words, and you are familiar with those?

"A Yes, sir.

"Q And you tell the Court that if that sentence is probated that you will live up to the terms and conditions of the probated sentence?

"A Yes, sir.

"Q You are a family man are you not, Mr. Bridges?

"A Yes, sir.

"Q. How many children do you have?

"A Three.

"Q And I believe that you live at Midlothian, Texas which is in Ellis County?

"A Yes, sir.

"Q I believe, also Mr. Bridges as a result of the—your companies you have filed in the Federal Court a voluntary petition for bankruptcy, which is now in adjudication?

"A Yes, sir.

"Q I believe also Mr. Bridges that in the companies that you and your father own or controlled there were few if any stockholders involved in any of these companies?

"A That is right.

"Q. You and your father owned 97 or 98 per cent of the stock, any of the stock that was out?

"A. Yes, sir.

"Q I believe also that as the result all of the policy holders have been reinsured in other companies by the Insurance Commission, have they not?

"A Yes, sir.

"Q And as a result no policy holder has lost or been denied a claim involving any of your companies?

"A That is true.

MR. BRUNER: I believe that is all.

"EXAMINATION

BY MR. ALEXANDER:

"Q Your name is W. L. Bridges, Jr.?

"A Yes, sir.

"Q And you are the defendant in this case?

"A Yes, sir.

"Q You are pleading guilty to the indictment because you are guilty?

"A Yes, sir.

"Q Not because anybody promised you anything or threatened you with anything?

"A Yes, sir.

"Q And you are guilty just like you are charged?

"A Yes, sir.

"Q Now, that is the second count of the indictment?

"A Yes, sir.

"Q Now, on December 16, 1959 you were an officer, that is President of the State National Life Insurance Company is that correct?

"A Yes, sir.

"Q And on that date you did give this check No. 131 in the amount of $30,000.00 to Mr. Russell?

"A Yes, sir.

"Q He indorsed the check and gave it back to you?

"A Yes, sir.

"Q And then it was deposited to the Commercial Discount Company?

"A Yes, sir.

"Q And then from Commercial Discount Company, the $30,000.00 was transferred into the W. L. Briges Agency?

"A Yes, sir.

"Q And of course you did not have the consent of the corporation to take that $30,000.00 into the W. L. Bridges Agency?

"A No, sir.

"Q. Now, you have made application for a probated sentence. Do you understand that this charge against you is a felony?

"A Yes, sir.

"Q And do you further understand that a felony is an offense for which a person may be sent to the penitentiary?

"A Yes, sir.

"Q Have you ever received a probated or suspended sentence in Texas or any other state?

"A No, sir.

"Q Have you ever been convicted of a felony in Texas or any other state?

"A No, sir.

"Q Now, awhile ago you stood before the Judge and you made certain waivers and agreements on the advice of your counsel?

"A Yes, sir.

"Q Now, as a witness under oath do you again agree to those same waivers and stipulations?

"A Yes, sir.

MR. ALEXANDER: That will be all.

THE COURT: If you want to go ahead, we will finish with both of them and then close the testimony.

"MR. BRUNER: All right, Mr. Bridges, take the stand.

"W. L. BRIDGES, SR.
called as a witness in his own behalf, having been first duly sworn was examined and testified as follows:

"EXAMINATION
BY MR. BRUNER:

"Q Your name is W. L. Bridges, Sr.?

"A Yes, sir.

"Q Can you hear me all right, Mr. Bridges?

"A Yes, sir.

"Q You live at Rural Route 2, Grand Prairie, Texas?

"A Yes, sir.

"Q What age man are you?

"A I will be 68 in May.

"Q Do you have trouble with your eyes?

"A Yes, sir I do have trouble with my eyes. I have been practically blind for more than a year.

"Q Have you had any operations on your eyes within the last 12 months?

"A I had an operation on my right eye recently.

"Q Mr. Bridges you have heard the testimony as stipulated by Mr. Bill Alexander, is that testimony substantially true and correct?

"A Yes, sir.

"Q You are entering a plea of guilty to the indictment as charged there in the securities violation and the count of embezzlement in the other indictment?

"A Yes, sir.

"Q Mr. Bridges, I will ask you whether or not you, own through your son, practically all of the stock of all these companies that you owned in the insurance business?

"A We owned seventeen of the companies by contract. The remaining company we owned practically all of the stock. There were no stockholders in the seventeen companies and the other company we owned practically all of the stock

"Q What I am getting at, all of the stock, the stockholders involved, the only stockholders involved, primarily were just you?

"A Yes, sir.

"Q Do you know that the policies that were in these companies have been reinsured and claims have been, are not denied, they will be paid on any policy that you have written?

"A Yes, sir.

"Q No claims were denied at any time while you had these companies?

"A During the time we had the companies every claim was promptly paid. We never had a contested claim during the twenty years we had the companies.

"Q You are accepting full responsibility for these companies, and the operation of these companies, you were the one ran these companies, were you not Mr. Bridges?

"A Yes, sir.

"Q Any of the employees of the companies you formed, anybody connected with the companies, you operated these companies yourself?

"A Whatever responsibility that there was or is connected here, Mr. Bruner, is mine and certainly not Bill Juniors, certainly not Miss Bishop's or any other employees.

"MR. BRUNER: That is all, thank you.

"EXAMINATION
BY MR. ELEXANDER:

"Q Now, your name is W. L. Bridges, Sr.?

"A Yes, sir.

"Q I will talk up loud.

"A I can hear you, except when the trucks make noise passing.

"Q All right, sir. Now, in this case No. 1933-I that is the violation of the securities act, you did sell Chester Klingman, 11,667 shares of Dallas Pega Palo Distributors Incorporated?

"A Yes, sir.

"Q And that capital stock of that company was not registered for sale with the Securities Commission, was it?

"A It was not.

"Q All right. Now, in this embezzlement case, No. 1934-I you are pleading guilty to that case are you not?

"A Yes, sir.

"Q And on March 29, 1960 were you an agent, servant and employee of the Hughes Imperial Funeral Insurance Company?

"A Yes, sir.

"Q And I will ask you then if you embezzled, misapplied and converted to your own use, $20,000.00 belonging to the Hughes Imperial Funeral Insurance Company?

"A Yes, sir.

"Q And that money had come into your possession by reason of your being an agent, servant and employee of that company?

"A Yes, sir.

"Q Now, you did not have the consent of the company to take that $20,000.00 did you sir?

"A No, sir.

"Q Now, Mr. Bridges, do you plead guilty because you are guilty?

"A Yes, sir.

"Q And not because anybody has promised you anything or threatened you with anything?

"No, sir.

"Q And you are guilty like you are charged?

"A Yes, sir.

"Q In these two indictments as they now stand?

"A Yes, sir.

"Q Now a while ago you stood before the Judge and on the advice of your counsel, and with the advice of your counsel you made certain waivers and agreements.

"Now, as a witness under oath, do you again agree to the same waivers and stipulations?

"A Yes, sir.

"Q And you are guilty just like you are charged?

"A Yes, sir.

"Q Now, Mr. Bridges, was this embezzlement by your boy over there was that your idea or his idea?

"A Mine.

"Q And he did it because you were his daddy and told him to?

"A Yes, sir.

"Q Now, everything—everything you own, all of your property is in the hands of the Federal Bankruptcy people, that was left after the State Insurance people got through with the assets, is that right?

"A Yes, sir.

"Q Do you have anything left out of any of these companies, or out of any of your businesses, any cash?

"A I do not.

"Q Have you been divested of all of your personal holdings?

"A Yes, sir.

"MR. ALEXANDER: Pass the witness.

"THE COURT: Is that all?

"MR. ALEXANDER: State closes.

"MR. BRUNER: Stand down. Defendants close.

"THE COURT: Close the testimony.

* * * * * * * * * *

"I, PAUL T. BASTAS, Official Court Reporter in and for Criminal District Court No. 2, Dallas County, Texas, do hereby certify that the foregoing 31 pages numbered from 1 to 31 inclusive, contain a full, true, accurate and complete transcript of the Statement of Facts in question and answer form of all the proceedings had upon the trial of the above numbered and entitled causes.

"WITNESS MY HAND this the 28th day of June, A.D., 1961.

"/s/ Paul T. Bastas

Paul T. Bastas, Official Court Reporter, Criminal District Court No. 2, Dallas County, Texas.

"We, the undersigned, attorneys for the State of Texas and the defendant, respectively, hereby agree that the above and foregoing 31 pages constitute a full, true accurate and complete question and answer transcript of the Statement of Facts in the above numbered and entitled causes.

"WITNESS OUR HANDS THIS THE 29th day of June, 1961.

"HENRY WADE, CRIMINAL DISTRICT ATTORNEY, DALLAS COUNTY, TEXAS

"BY .....
Assistant District Attorneys
for the State of Texas

"/s/ Robert B. Billings
.....
Attorney for the Defendant.

The above and foregoing Statement of Facts certified to by the Official Court Reporter and agreed to by the Attorneys of Record for the State of Texas and the Defendant, having been presented to me, same is examined, approved, and ordered filed as the Statement of Facts in these causes.

"This 29th day of June ....., A.D., 1961.

.....
"HENRY KING, Judge
Criminal District Court No. 2.
Dallas County, Texas.

Exhibits (Tr. 75-81), attached to the original transcript are not reprinted herein.

4. OPINION OF THE COURT OF CRIMINAL APPEALS OF FEBRUARY 25, 1962 (R. 85-86).

"On rehearing, appellant makes certain contentions which he alleges are supported by the statement of facts and urges that this Court consider what purports to be a statement of facts for the first time. It does not appear to have been approved by the trial judge or prosecuting attorney and was not filed with the clerk of the trial court as required by Article 759a, V.A.C.C.P., and the holding of this Court in Couch v. State, 255 S. W. 2d 223.

"The affidavit of appellant and his counsel to the effect that the statement of facts was presented to the trial judge for approval on June 29, 1961, which was within the time allowed by the judge, does not show sufficient diligence; he must go further and see that it is approved and filed in time. Ex parte Denson, 307 S. W. 2d 952; Randolph v. State, 234 S. W. 2d 235; Webb v. State, 4 S. W. 2d 45. There is no showing that appellant or his counsel gave the matter of the approval of the statement of facts any further attention after June 29, 1961.

"The statement of facts before us therefore cannot be considered, and the motion for rehearing is overruled.

Morrison, Judge"

(Delivered February 28, 1962)

5. ORDER OVERRULING MOTION FOR REHEARING (p. 87).

"This cause came on to be heard on Appellant's Motion for Rehearing, and the same being considered, it is ordered, adjudged and decreed by the Court that said motion be and the same is hereby in all things overruled."

6. APPELLANT'S SECOND MOTION FOR REHEARING (R. 89-92).

"Now comes the appellant in the above Causes and files this, his Second Motion for Rehearing therein, and in support of such motion appellant would show the following:

"1. The Court erred in holding that there was not sufficient diligence on the part of appellant or his counsel with respect to the presentation of the Statement of Facts. In this connection appellant directs the attention of the Court to the fact that after the Statement of Facts was presented to the trial judge by appellant's counsel on June 28, 1961, appellant twice sought and obtained extensions of the time for filing the Statement of Facts in each case. (Cause No. 34,053, Tr. pp. 19 & 20; Cause No. 34,054, Tr. pp. 17 & 19). It is apparent from these transcripts that these extensions were obtained to provide an opportunity for the trial judge to comply with Art. 759a, Sec. 1, E.

"2. The Court erred in failing and refusing to

consider the Statement of Facts presented to this Court.

"3. The Court erred in placing upon Article 759a, V.A.C.C.P. an interpretation which would prohibit the consideration of the Statement of Facts presented to this Court, because such interpretation deprived the appellant of an opportunity to properly present his appeal; and such erroneous interpretation of Article 759a denied the appellant due process of law as provided by statute and equal protection of law to which he is entitled under the Constitution of the State of Texas, and the United States Constitution and the Amendments thereto. In this connection appellant says that the interpretation by the Court of Criminal Appeals of Article 759a placed upon the appellant the burden to initiate a mandamus proceeding to require the trial judge to perform the function and duty required of him by Article 759a, Sec. 1, E. That is, the effect of the Court's interpretation of Article 759a, Sec. 1, E is to require the appellant to undertake to mandamus the trial judge to prepare and certify to a Statement of Facts, as the trial judge is required to do under the provisions of said statute if the parties cannot agree on a Statement of Facts within seventy-five (75) days after giving notice of appeal. Appellant submits that such interpretation of said statute, placing upon appellant the burden of the trial judge's non-compliance with the mandate of the statute, constitutes a denial of due process of law.

"4. The Court erred in failing and refusing to consider appellant's point that appellant was denied a fair trial, and due process of law and equal protection of law under the Constitutions of Texas, and of the United States and the Amendments thereto, because appellant lacked effective assistance of counsel as a result of the conflict of interest of his trial counsel; and the Court erred in failing to reverse these Causes for such error.

"5. The Court erred in affirming the judgment in Cause No. 34,053 because the Securities Act which appellant is accused of violating is unconstitutional for the reason that it deprives him under the circumstances of this case of the right to sell his own stock and property and securities, and denies him the equal protection of the law under the Constitutions of Texas and the United States.

"6. The Court erred in affirming the judgment in Cause No. 34,053 because the appellant, under the Constitution and Laws of the State of Texas, and the United States, has the right, and had the right, to dispose of his personal property, to wit, shares of stock of Dallas Pega Palo Distributors, Inc., which shares were his own property, and the Texas Securities Act if denying him such right, denied him the equal protection of the law under the Constitutions of Texas and the United States.

"7. The Court erred in affirming the judgment in Cause No. 34,054 because the indictment in Cause Number 34,054 is defective because it does not allege any intent to deprive the owner, whoever that

might be, and who is not stated in the indictment, of the use and benefit of the property alleged to have been embezzled. For that reason the action of the trial court and this Court has denied him due process of law under the Constitutions and laws of Texas and the United States.

"8. The Court erred in affirming the judgment in Cause No. 34,054 because under the Constitutions and Laws of Texas and the United States the appellant has the right to be tried by due process of law, and due process is denied him because the indictment in Cause Number 34,054 does not charge him with a felony offense in clear and intelligible and specific language, in that it is not alleged that he is not the owner of Hughes Imperial Funeral Insurance Company, and it is not made to appear that the property he is alleged to have embezzled was not his own property.

"Wherefore appellant prays that the Statement of Facts heretofore presented to the Court be accepted and considered by the Court, and that the Court grant a rehearing in these causes, and that upon rehearing each of these Causes be reversed and remanded for a new trial."

"7. JUDGMENT OVERRULING SECOND MOTION (R. 93).

"This cause came on to be heard on Appellant's Second Motion for Rehearing, and the same being

considered, it is ordered, adjudged, and decreed by the Court that the said motion be and the same is hereby in all things overruled."

"8. CERTIFICATE OF CLERK OF COURT OF THE CRIMINAL APPEALS (Material Portion, R. 112).

"I, GLENN HAYNES, Clerk of the Court of Criminal Appeals of Texas, do hereby certify that in our Cause No. 34,053 styled,

W. L. Bridges, Sr., Appellant
versus
The State of Texas, Appellee

judgment of the Criminal District Court No. 2 of Dallas County, Texas, was affirmed on January 3, 1962, Appellant's Motion for Rehearing overruled February 28 1962, Appellant's Second Motion for Rehearing overruled, without written opinion, April 4, 1962, and, on April 19, 1962, Order received from Hon. Hugo L. Black, Associate Justice of the Supreme Court of the United States, staying mandate of this Court pending the filing and disposition of a petition for writ of certiorari.

"THEREFORE, with the overruling of Appellant's Second Motion for Rehearing, this cause was disposed of by this Court on April 4, 1962, appellant having exhausted all remedies in this, The Court of Criminal Appeals of Texas, and the court of last resort of Texas in criminal cases, and said judgment has now become final on the docket of this court. Mandate would have issued had it not been stayed on Order of the Supreme Court of the United States."

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 220

W. L. BRIDGES, SR.,
Petitioner,
versus
THE STATE OF TEXAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

HUME COFER
JOHN D. COFER
1408 Capital National Bank Bldg.
Austin 1, Texas
ATTORNEYS FOR PETITIONER

OF COUNSEL:
DOUGLASS D. HEARNE
Of Austin, Texas

Baldwin Printing Company, Inc., 209 West Eighth Street, Austin

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. .....

W. L. BRIDGES, SR.,
Petitioner,

versus

THE STATE OF TEXAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

TO THE HONORABLE EARL WARREN, CHIEF JUSTICE OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, W. L. Bridges, Sr., prays that a Writ of Certiorari issue to review the judgment of The Court of Criminal Appeals of Texas, entered in Cause number 34,054, and the above entitled case on April 4, 1962.

Citations to The Opinion and Action Below

The opinion of the Court below is as yet unreported, and it, on original submission, and upon Motion for Rehearing, is printed in Appendix B hereto, infra pp. 18-19. There was no opinion by the District (Trial) Court. The trial was before the Court without a jury. (R. 14-15).

So much of the record in the two Petitions for Certiorari respectively as is common to both cases is not reprinted in the Appendices to this Petition, but is referred to where printed in the Petition in Cause No. 34,053.

Jurisdiction

The judgment of the Court of Criminal Appeals affirming petitioner's conviction was returned January 3, 1962. (R. 29, printed in Appendix B hereto, infra pp. 19-20). Rehearing was denied with written opinion (R. 85-87; opinion printed in Appendix B of Petition in Cause No. 34,053, p. 59; order overruling printed in Petition in Cause No. 34,053, p. 60).

Under the Rules adopted by The Court of Criminal Appeals, Rule VI, (R. 95, printed in Appendix A of Petition in Cause No. 34,053, pp. 14-15), the appellant is entitled as a matter of right to file a Second Motion for Rehearing within fifteen (15) days from the overruling of the First Motion for Rehearing.

The First Motion for Rehearing was filed January 17th, 1962, within the time required by law (R.

30); petitioner filed, with leave of Court, his Amended Motion for Rehearing on February 19, 1962 (R. 33). Said Motion as amended was overruled by written opinion February 28, 1962.

Second Motion for Rehearing was filed March 15, 1962 (R. 88); and overruled without written opinion by judgment entered April 4, 1962 (R. 93-94; printed in Appendix B of Petition in Cause No. 34,053, pp. 62-63).

It is from this last final judgment of April 4, 1962 to which petition for certiorari is taken.

Petitioner promptly (April 6, 1962) filed a Motion for Leave to File Third Motion for Rehearing or in the Alternative for Stay Pending Certiorari to The Supreme Court of the United States (R. 97-105); which was not filed or allowed (R. 112).

Upon sworn application (respondent making no opposition), on April 18, 1962, mandate was stayed by Associate Justice Black (R. 106-107).

The jurisdiction of The Supreme Court is invoked under 28 U.S.C., Section 1257 (3).

How Federal Question Raised

The point that petitioner did not get a fair trial because his counsel was disqualified to advise him to plead guilty and take the blame in the case and accept punishment in lieu of his son, his joint defendant, in order that the son might receive a pro-

bated sentence, was raised for the first time on the Amended Motion for Rehearing in The Court of Criminal Appeals (R. 33-40).

In this connection the Statement of Facts, being a transcript of the trial in the District Court, was tendered to the Court of Criminal Appeals in order to show that the trial in the lower court was no trial at all, but a mere mockery (R. 41-81, printed in Appendix B of Petition in Cause No. 34,053, pp. 25-59).

The Court of Criminal Appeals permitted the filing of the Amended Motion but refused to permit filing of, or to consider, the transcript of the testimony in the trial court (opinion, R. 86); even though petitioner contended the Texas Statute (Texas Code of Criminal Procedure, Art. 759a, Sec. 1, E) makes it the duty of the trial judge to file a statement of facts.

On Second Motion for Rehearing (Paragraph 3, R. 89-90), petitioner presented the point that the interpretation placed by The Court of Criminal Appeals denied petitioner a fair trial, by prohibiting the consideration of the transcript of the testimony by the appellate court, and thus preventing petitioner the opportunity of demonstrating that he had been denied due process and had not had a fair trial in the trial of his case below. In McBee v. United States, 361 U.S. 537, the Supreme Court held that an appellant "is as a matter of due process 'assured of some appropriate means' of making manifest the

basis of his claim that the District Court committed error."

Questions Presented

1. In a case where the petitioner and his son were both indicted, the son for embezzlement from an insurance company of property over $50.00, and the father for selling an unregistered security (Cause No. 34,053) and also for embezzlement from the insurance company of property over $50.00 (Cause No. 34,054); and the petitioner and his son were represented by the same attorney; and petitioner, on the advice of said attorney, pled guilty to both offenses of which he was charged in order that his son might receive a probated sentence in his offense; and no trial was actually held, but both cases were heard together without any testimony except from petitioner and his son, without affidavits or other testimony of guilt, but upon stipulation of counsel as to what witnesses would testify if present; and the petitioner received two years in one case and three years in the other, the offenses running consecutively (a total of five years); whether the petitioner had effective assistance of counsel; and whether his trial was no trial at all and he was denied due process, when there was no interrogation of witnesses, and no witnesses at the trial and counsel stipulated what witnesses would swear to, and no defense was made, and counsel advised petitioner to plead guilty without contacting witnesses and going into petitioner's actual guilt, and counsel failed to perfect and prosecute an appeal.

2. Whether petitioner, on appeal by other counsel, was denied due process of law in The Court of Criminal Appeals, by the refusal of the appellate court to consider the record of the trial so that petitioner could demonstrate his trial was a mere mockery.

Statutes Involved

The Constitution of The United States, and the Fourteenth Amendment thereto, are not printed.

No Federal Statute is involved.

The Constitution, Statutes, and Court Rules of the State of Texas are involved:

Constitution of Texas, Article 5, Sec. 5, printed in Appendix A of Petition in Cause No. 34,053, pp. 13-14.

Vernon's Texas Civ. Stats. (1948, as amended), Art. 1806, printed in Appendix A of Petition in Cause No. 34,053, p. 14.

Vernon's Texas Code of Criminal Procedure, Article 759a, Sec. 1, E. being the Acts of 1951, 52nd Tex. Leg., p. 819, Ch. 485, printed in Appendix A of Petition in Cause No. 34,053, pp. 16-17.

Rules of The Court of Criminal Appeals, Rule VI, (Vernon's Tex. Code of Cr. Pr., Vol. 3, pocket parts 1961, p. 127-128), printed in Appendix A of Petition in Cause No. 34,053, pp. 14-15.

Vernon's Tex. Criminal Code, Article 1534, printed Appendix A, infra pp. 14-15.

Statement

The petitioner was tried in The Criminal District Court No. 2, Dallas County, Texas, in Cause No. D-1934-I, State of Texas versus W. L. Bridges, Sr., (R. 13), under an indictment which went to the jury on the second count for embezzlement of funds of a private corporation (R. 5-6, printed Appendix B, infra pp. 15-18). The Texas statute involved is Texas Penal Code, Article 1534, printed Appendix A, infra pp. 14-15.

The petitioner pled guilty, waived a jury, was convicted by the Court, and sentenced to three (3) years in the penitentiary. The sentence was not made concurrent with Cause Number 34,053 (R. 16-17).

At the same hearing petitioner was tried in District Court in Cause Number D-1933-I (appellate No. 34,053), and in which Petition for Certiorari is filed together with this Petition, and also at the same hearing, petitioner's son was tried in Cause Number D-1932-I in the same court (R. 81).

The parties could not agree upon a statement of facts (transcript of the evidence) within seventy-five (75) days as provided by the Texas statute, and the Trial Judge failed to prepare and certify to a statement of facts as required by the statute (Art. 759a, Sec. 1, E, printed in Appendix A of Petition in Cause No. 34,053, pp. 16-17; see affidavit Amend-

ed Motion for Rehearing, printed in Appendix B, in Petition in Cause No. 34,053, p. 25).

The time was extended for filing and approved four different times, until July 14, 1961 (R. 19-22); but no statement of facts was ever prepared and certified to by the "trial judge."

The Court of Criminal Appeals held that the burden is upon the appellant to see that the trial judge files the statement of facts. (R. 86).

The petitioner tendered the statement of facts as prepared and certified to by the Official Court Reporter and the petitioner's attorney on appeal, but not approved by the State's Attorney or the Trial Judge. (R. 73). The Court of Criminal Appeals refused to consider it. (R. 86).

The Statement of Facts is printed in Appendix B of Petition in Cause No. 34,053, pp. 25-59.

The Court of Criminal Appeals has affirmed petitioner's conviction (R. 27-29, opinion printed in Appendix B, infra pp. 18-20); and rehearing overruled (R. 85-87); and second motion overruled. (R. 93).

Reasons for Granting the Writ

The petitioner in this case (Cause No. 34,054, in the Texas Court of Criminal Appeals) was denied even a semblance of a trial.

Petitioner and his son, W. L. Bridges, Jr., were indicted in connection with the same transaction in Causes D-1932-I, D-1933-I, and D-1934-I. The cases were all heard together, and upon the advice of counsel who represented both the petitioner and his son, petitioner shouldered the entire blame, and he received two years in Cause No. D-1933-I, and three years in Cause No. D-1934-I. His son received a probated sentence. There was not even a semblance of a trial. Petitioner testified and took the blame. Counsel testified what certain witnesses would testify to. The son testified that he had never been convicted of a felony. (R. 38, affidavit of petitioner printed in Appendix B of Petition in Cause No. 34,053, p. 25).

Under the Texas Constitution and Statute, Constitution Article 5, Sec. 5, printed in Appendix A, in Petition in Cause No. 34,053, pp. 13-14, and Article 1806, printed in Appendix A of Petition in Cause No. 34,053, p. 14, the Court of Criminal Appeals may consider affidavits to determine its jurisdiction. They had the power to determine whether petitioner received a trial, or was subjected to a mere mock trial.

It was the duty of the trial judge to prepare and certify to the Statement of Facts, after the parties failed to agree in seventy-five (75) days. See: Vernon's Tex. Code of Cr. Pr., Art. 759a, Sec. 1, E. printed in Petition in Cause No. 34,053, pp. 16-17. But though the approval was a mere formality, since the statement of facts was prepared by the official

Court Reporter, the Court of Criminal Appeals refused to consider it.

The petitioner was entitled to some memoranda, as essential to due process, to demonstrate to the appellate court, and this Court, that he did not have a fair trial. This Court in a similar case, McBee v. United States, 361 U.S. 537, reversed the lower court and approved the dissenting opinion of Judge Bazelon in 261 F. 2d 744, and directed reconsideration in light of Johnson v. United States, 352 U.S. 565, where it was held that while the United States is not forced to furnish the defendant with a stenographic transcript of the trial, he is as a matter of due process "assured of some appropriate means". . . . "of making manifest the basis of his claim that the district court committed error."

The Texas Statute, in case of failure to agree within seventy-five (75) days, requires the district judge to prepare and certify to a statement of facts. Where he has refused to do so, what more "appropriate means" could there be to manifest the error in the trail than a transcript of the proceedings certified to by the Official Court Reporter of the trial court.

The question is basic. Did the appellant get a fair trial, or did he instead get no trial at all?

It is elementary that as part of due process, defendant is entitled to effective assistance of counsel, Johnson v. Zerbst, 304 U.S. 458. This is equally well settled by the Court of Criminal Appeals in Martinez

v. State of Texas, 318 S.W. 2d 66, not yet officially reported.

Quoting from Poter v. United States, 298 F. 2d 461 (5th Cir.), our case is "not the sterile one of a defendant claiming that his lawyer could not give unfettered loyalty to his interests merely because he represented other people, good or bad," but our situation goes further. Under the advice of counsel representing both petitioner and petitioner's son, petitioner agreed to "take the rap" for his son. The attorney advised and permitted petitioner to do this, without interviewing or calling witnesses, and by stipulating what absent witnesses would testify to. Such a trial is a mere mockery. See: Frand v. United States, 301 F. 2d 102; Mitchell v. United States, 259 F. 2d 787; Black v. United States, 269 F. 2d 38; Stanley v. United States, 239 F. 2d 765; and Washington v. United States, 297 F. 2d 342.

"The Constitution assures a defendant effective representation by counsel *whether the attorney is one of his own choosing or court appointed.*" (Emphasis ours). See: Porter v. United States, (5th Cir.), 398 F. 2d 461.

The last case cites and relies upon Glasser v. United States, 315 U.S. 60; and Johnson v. Zerbst, 304 U.S. 458; and Johnson v. United States, 352 U.S. 565.

The Fifth Circuit has had this question of effective counsel before it in a series of cases from the State of Texas, and has adhered strictly to the pilot

cases by the Supreme Court and Martinez v. State of Texas, 318 S.W. 2d 66. See: McKenna v. Ellis, 263 F. 2d 35; McKenna v. Ellis, 280 F. 2d 592; McKenna v. Ellis, (by court in banc) 289 F. 2d 928; and McKenzie v. Ellis, 287 F. 2d 549, (reversing 185 F. Supp. 931), where the Martinez rule as to an attorney not in good standing was expressly approved by the appellate court.

Under the circumstances of petitioner's case, the Court of Criminal Appeals of Texas should not have closed its eyes and refused to look at the Court Reporter's transcript of the testimony, in order to determine whether petitioner because of his counsel, had no trial at all, but was shoved off to the penitentiary in an informal agreement between the attorney and the State and the petitioner.

Conclusion

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Hume Cofer

HUME COFER

John D. Cofer

JOHN D. COFER
1408 Capital National Bank Bldg.
Austin 1, Texas

ATTORNEYS FOR PETITIONER

June 20, 1962

OF COUNSEL:

DOUGLASS D. HEARNE
Of Austin, Texas

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition for Writ of Certiorari has been served upon Respondent by depositing the same in a United States post office, with first class air mail postage prepaid, addressed to the counsel of record for Respondent, namely Hon. Leon Douglas, States Attorney for the Court of Criminal Appeals.

John D. Cofer

John D. Cofer
Counsel for Petitioner

ENTRY OF APPEARANCE

The undersigned, Hume Cofer, and John D. Cofer, 1408 Capital National Bank Building, Austin 1, Texas, both members of the Bar of the Supreme Court of the United States, hereby enter their appearance in the captioned cause on behalf of Petitioner, Douglass D. Hearne, 1408 Capital National Bank Building, Austin 1, Texas, is of counsel.

Hume Cofer

Hume Cofer

John D. Cofer

John D. Cofer
Counsel for Petitioner

APPENDIX A

TEXAS PENAL CODE, ARTICLE 1534.

"ART. 1534 (1416) (938) (786) EMBEZZLEMENT

"If any officer, agent, clerk, employè, or attorney at law or in fact, of any incorporated company or institution, or any clerk, agent, attorney at law or in fact, servant or employè of any private person, copartnership or joint stock association, or any cosignee or bailee of money or property, shall embez-

zle, fraudulently misapply or convert to his own use, without the consent of his principal or employer, any money or property of such principal or employer which may have come into his possession or be under his care by virtue of such office, agency or employment, he shall be punished in the same manner as if he had committed a theft of such money or propetry. Acts 1858, P. 182; Acts 1876, P. 9."

Other Statutes involved are copied in Appendix A to the Petition in Cause Number 34,053.

APPENDIX B

1. INDICTMENT (R. 5-6)

A TRUE BILL
Filed 9/12/60

"IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS, the Grand Jurors, good and lawful men of the County of Dallas and State of Texas, duly elected, tried, impaneled, sworn and charged to inquire of offenses committed within the body of the said County of Dallas, upon their oaths do present in and to the Criminal District Court No. 2 of Dallas County, at the July term, A. D., 1960, that one W. L. Bridges, Senior on or about the 29 day of March in the year of our Lord One Thousand Nine Hundred and 60, and anterior to the presentment of this indictment, in the County and State aforesaid, did unlawfully and fraudulently take twenty thousand dollars which is of the aggregate value of over fifty dollars, the same being the

aggregate value of over fifty dollars, the same being the corporeal personal property of Hughes Imperial Funeral Insurance Company, a Local Mutual Aid Association, duly organized under the laws of the State of Texas, from the possession of the said Hughes Imperial Funeral Insurance Company without the consent of the said Hughes Imperial Funeral Insurance company and with the intent to deprive the said Hughes Imperial Funeral Insurance Company of the value thereof, and with the intent to appropriate it to the use and benefit of him, the said W. L. Bridges, Senior.

"AND THE GRAND JURORS AFORESAID, good and lawful men of the County of Dallas, and State of Texas, duly elected, tried, empaneled, sworn and charged to inquire of offenses committed within the body of said County of Dallas, upon their oaths do further present in and to the Criminal District Court No. 2, of Dallas County, at the July Term, A. D., 1960, of said Court that one W. L. Bridges, Senior, on or about the 29 day of March, in the year of Our Lord One Thousa d Nine Hundred and 60, and anterior to the presentment of this indictment, in the County and State aforesaid, was the agent servant and employee of Hughes Imperial Funeral Insurance Company, a Local Mutual Aid Association duly organized under the laws of the State of Texas, and the said W. L. Bridges, Senior, did then and there fraudulently embezzle, misapply and convert to his own use, without the consent of the said Hughes Imperial Funeral Insurance Company certain money, to wit, twenty thousand dollars which is

of the aggregate value of over fifty dollars belonging to the said Hughes Imperial Funeral Insurance Company, which said money had come into the possession of, and was then under the care of, the said W. L. Bridges, Senior, by virtue of such employment as such agent, servant and employee; as aforesaid, AND THE GRAND JURORS AFORESAID, upon their oaths aforesaid, do further present in and to said Court, at the said term thereof, that one W. L. Bridges, Senior, on or about the 29th day of March, A. D., 1960, and anterior to the presentment of this indictment, in the County and State aforesaid was an officer, agent and employee of Hughes Imperial Funeral Insurance Company, a Local Mutual Aid Association, duly organized under the law of the State of Texas and the said W. L. Bridges, Senior, did then and there willfully borrow, withhold and divert from its purpose a special fund or a part thereof, to wit, a mortuary fund in the aggregate value of over fifty dollars, belonging to and under the control and management of the said Hughes Imperial Funeral Insurance Company, which special fund had been set apart by law of the State of Texas for a specific use, Against the peace and dignity of the State.

/s/ L. A. Beecherl
Foreman of the Grand Jury

"HENRY WADE
Criminal District Attorney of
Dallas County, Texas

"ENDORSEMENT OF INSTRUMENT: State Witnesses: Hughes Imperial Ed Miller No. D-1934-I, The State of Texas vs. W. L. Bridges, Sr., Theft over

$50.00 and Embezzlement over $50.00, A true Bill, L. A. Beecherl, Foreman of the Grand Jury. Filed Sept. 12, 12:59 P.M., 1960, Bill Shaw, District Clerk, Dallas County, Texas, by McCormick, Deputy.

2. OPINION OF THE COURT OF CRIMINAL APPEALS OF JANUARY 3, 1962 (R. 27-28).

"Appellant was convicted upon his plea of guilty before the court without a jury of the offense of embezzlement of corporeal personal property of the value of $50, or over, and his punishment assessed at confinement in the penitentiary for a term of three years.

"No statement of facts of the evidence adduced upon the trial accompanies the record and there are no bills of exception.

"Appellant's sole contention on appeal is that the indictment fails to charge an offense. Such contention is urged as fundamental error, appellant having filed no exception or motion to quash the indictment in the trial court.

"The second count of the indictment under which appellant stands convicted, omitting the formal parts, charged that on or about the date alleged, the appellant:

> '. . . was the agent, servant and employee of Hughes Imperial Funeral Insurance Company, a local Mutual Aid Association duly organized under the laws of the State of Texas, and the said W. L. Bridges, Senior, did then and there fraudulently

embezzle, misapply and convert to his own use, without the consent of the said Hughes Imperial Funeral Insurance Company certain money, to wit, twenty thousand dollars which is of the aggregate value of over fifty dollars belonging to the said Hughes Imperial Funeral Insurance Company, which said money had come into the possession of, and was then under the care of, the said W. L. Bridges, Senior, by virtue of such employment as such agent, servant and employee, as aforesaid, . . .'

"The indictment follows the language of the statute defining the offense of embezzlement, Art. 1534, V.A.P.C. and is sufficient.

"We overrule appellant's contention that the indictment is insufficient because it does not allege that appellant embezzled the money with the intent to deprive the owner of the use and benefit of the same. Such is not a necessary allegation in charging the offense of embezzlement. 16 Tex. Jur., par. 134, p. 146; 21 Tex. Jur. 2nd, par. 87, p. 682; Leonard vs. State, 7 Texas App. 417.

"The judgment is affirmed."

3. JUDGMENT AFFIRMING (R. 29).

"This cause came on to be heard on the transcript of the record of the Court below, and the same being inspected, because it is the opinion of this Court that there was no error in the judgment, it is ordered, adjudged and decreed by the Court that the judgment be in all things affirmed, and that the

appellant pay all costs in this behalf expended, and that this decision be certified below for observance."

4. CERTIFICATE OF CLERK OF THE COURT OF CRIMINAL APPEALS (Material Portion, R. 112)

"I, GLENN HAYNES, Clerk of the Court of Criminal Appeals of Texas, do hereby certify that in our Cause No. 34,054, styled,

W. L. BRIDGES, SR., APPELANT

versus

THE STATE OF TEXAS, APPELLEE

judgment of the Criminal District Court No. 2 of Dallas County, Texas, was affirmed on January 3, 1962, Appellant's Motion for Rehearing overruled February 28, 1962, Appellant's Second Motion for Rehearing overruled, without written opinion, April 4, 1962, and, on April 19, 1962, Order received from Hon. Hugo L. Black, Associate Justice of the Supreme Court of the United States, staying mandate of this Court pending the filing and disposition of a petition for writ of certiorari.

"THEREFORE, with the overruling of Appellant's Second Motion for Rehearing, this cause was disposed of by this Court on April 4, 1962, appellant having exhausted all remedies in this, The Court of Criminal Appeals of Texas, and the court of last resort of Texas in criminal cases, and said

judgment has now become final on the docket of this court. Mandate would have issued had it not been stayed on Order of the Supreme Court of the United States."